

97-85-44

FILE NO. _____

ORDINANCE NO. 527-85

(Employee Activities and Drug Testing)

AMENDING PART II, CHAPTER VIII OF THE SAN FRANCISCO MUNICIPAL
CODE (POLICE CODE) BY ADDING ARTICLE 33A THERETO TO PROHIBIT
EMPLOYER INTERFERENCE IN EMPLOYEE RELATIONSHIPS AND ACTIVITIES
AND TO PROHIBIT EMPLOYER DRUG TESTING OF EMPLOYEES.

Note: This entire Article is new.

Be it ordained by the People of the City and County of San
Francisco:

Part II, Chapter VIII of the San Francisco Municipal Code
(Police Code) is hereby amended by adding Article 33A thereto, to
read as follows:

ARTICLE 33A

PROHIBITION OF EMPLOYER INTERFERENCE WITH EMPLOYEE

RELATIONSHIPS AND ACTIVITIES AND REGULATION

OF EMPLOYER DRUG TESTING OF EMPLOYEES

Sec. 3300A.1 POLICY. It is the public policy of the City
and County of San Francisco that all citizens enjoy the full
benefit of the right to privacy in the workplace guaranteed to
them by Article 1, Section 1 of the California Constitution. It
is the purpose of this Article to protect employees against
unreasonable inquiry and investigation into off-the-job conduct,
associations, and activities not directly related to the actual
performance of job responsibilities.

Sec. 3300A.2 DEFINITIONS.

(1) "Employee" shall mean any person working for salary
or wages within the City and County of San Francisco, other than
members of the uniformed ranks of the police, sheriff's and fire
departments, police department communication dispatchers, and any
persons operating emergency service vehicles for the City and
County of San Francisco.

(2) "Employee labor organization" shall mean any
organization that exists and is constituted for the purpose, in
whole or in part, of collective bargaining or of dealing with
employers concerning grievances, terms or conditions of
employment, or of other mutual aid or protection.

(3) "Employer" shall mean the City and County of San
Francisco, any individual, firm, corporation, partnership, or
other organization or group of persons however organized, located
or doing business within the City and County of San Francisco,
that employs personnel for salary or wages, or any person acting
as an agent of such an organization.

Sec. 3300A.3 EMPLOYER INTERFERENCE IN PERSONAL
RELATIONSHIPS OF EMPLOYEES PROHIBITED. No employer may make,
adopt, or enforce any rule or policy forbidding or preventing
employees from engaging or participating in personal
relationships, organizations, activities, or otherwise
restricting their freedom of association, unless said
relationships, activities, or associations have a direct and
actual impact on the employees' ability to perform their assigned
responsibilities.

Sec. 3300A.4 CONFLICTS OF INTEREST. It is not the
intention of the Board of Supervisors in adopting this Article to
prohibit an employer from promulgating or enforcing rules or
policies prohibiting conflicts of interest, which prohibit
employees from making, participating in making, influencing or
attempting to influence decisions in which they have a financial
interest, as such would be defined under Government code section
81000 et. seq. were they public officials, or which prohibit
employees from being financially interested, within the meaning
of Government Code section 1090, et seq. were they public

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employees, in any contract made by them in their capacity as employees.

Sec. 3300A.5 EMPLOYER PROHIBITED FROM TESTING OF EMPLOYEES. No employer may demand, require, or request employees to submit to, to take or to undergo any blood, urine, or encephalographic test in the body as a condition of continued employment. Nothing herein shall prohibit an employer from requiring a specific employee to submit to blood or urine testing if:

- (a) the employer has ~~objective~~, reasonable grounds to believe that an employee's faculties ^{are} ~~have been~~ impaired ~~while~~ on the job; and
- (b) the employee is in a position where such impairment presents a clear and present danger to the physical safety of the employee, another employee or to a member of the public; and
- (c) the employer provides the employee, at the employer's expense, the opportunity to have the sample tested or evaluated by State licensed independent laboratory/testing facility and provides the employee with a reasonable opportunity to rebut or explain the results.

In conducting those tests designed to identify the presence of chemical substances in the body, and not prohibited by this section, the employer shall ensure to the extent feasible that the test only measure and that its records only show or make use of information regarding chemical substances in the body which are likely to affect the ability of the employee to perform safely his or her duties while on the job.

Under no circumstances may employers request, require or

conduct random or company-wide blood, urine or encephalographic testing.

In any action brought under this Article alleging that the employer had violated this section, the employer shall have the burden of proving that the requirements of Subsections (a), (b) and (c) as stated above have been satisfied.

Sec. 3300A.6 MEDICAL SCREENING FOR EXPOSURE TO TOXIC SUBSTANCES. Nothing in this Article shall prevent any employer from conducting medical screening, with the express written consent of the employees, to monitor exposure to toxic or other unhealthy substances in the workplace or in the performance of their job responsibilities. Any such screenings or tests must be limited to the specific substances expressly identified in the employee consent form.

Sec. 3300A.7 PROHIBITING USE OF INTOXICATING SUBSTANCES DURING WORKING HOURS; DISCIPLINE FOR BEING UNDER THE INFLUENCE OF INTOXICATING SUBSTANCES DURING WORKING HOURS. Nothing in this Article shall restrict an employer's ability to prohibit the use of intoxicating substances during work hours, or restrict an employer's ability to discipline employees for being under the influence of intoxicating substances during work hours.

Sec. 3300A.8 ENFORCEMENT.

(a) Any aggrieved person may enforce the provisions of this Article by means of a civil action. Any person who violates any of the provisions of this Article or who aids in the violation of this Article shall be liable to the person aggrieved for special and general damages, together with attorney's fees and the costs of action.

(b) Injunction.

(1) Any person who commits, or proposes to commit,

1 an act in violation of this Article may be enjoined therefrom by
2 any court of competent jurisdiction.

3 (2) An action for injunctive relief under this
4 subsection may be brought by any aggrieved person, by the
5 District Attorney, or by the City Attorney, or by any person or
6 entity which will fairly and adequately represent the interests
7 of the protected class.

8 Sec. 3300A.9 CITY UNDERTAKING LIMITED TO PROMOTION OF
9 GENERAL WELFARE. In undertaking the adoption and enforcement of
10 this ordinance, the City and County is assuming an undertaking
11 only to promote the general welfare. It is not assuming, nor is
12 it imposing on its officers and employees, an obligation for
13 breach of which it is liable in money damages to any person who
14 claims that such breach proximately caused injury.

15 Sec. 3300A.10 PREEMPTION. In adopting this Article, the
16 Board of Supervisors does not intend to regulate or affect the
17 rights or authority of an employer to do those things that are
18 required, directed, or expressly authorized by federal or state
19 law or administrative regulation or by a collective bargaining
20 agreement between an employer and an employee labor
21 organization. Further, in adopting this Article, the Board of
22 Supervisors does not intend to prohibit that which is prohibited
23 by federal or state law or administrative regulation or by a
24 collective bargaining agreement between an employer and an
25 employee labor organization.

26 Sec. 3300A.11 SEVERABILITY. If any part or provision of
27 this Article, or the application thereof to any person or

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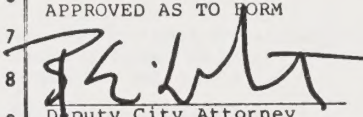
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1 circumstance, is held invalid, the remainder of this Article,
2 including the application of such part or provision to other
3 persons or circumstances, shall not be affected thereby and shall
4 continue in full force and effect. To this end, provisions of
5 this Article are severable.

6 APPROVED AS TO FORM

7 
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9 Deputy City Attorney

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Board of Supervisors, San Francisco

Passed for Second Reading

November 12, 1985

Ayes: Supervisors Britt Hongisto
Kennedy Maher Molinari Nelder
Renne Silver Walker

No: Supervisors Kopp

Absent: Supervisors Ward

§ Finally Passed

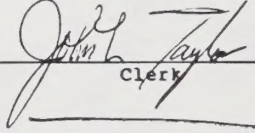
§ November 18, 1985

§ Ayes: Supervisors Britt Hongisto
§ Kennedy Maher Molinari Nelder
§ Renne Silver

§ No: Supervisors Kopp

§ Absent: Supervisors Walker Ward

I hereby certify that the foregoing ordinance
was finally passed by the Board of Supervisors
of the City and County of San Francisco


Clerk

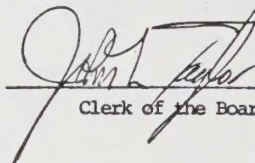
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Date Approved

Mayor

December 2, 1985

I hereby certify that the foregoing ordinance, not being
signed by the Mayor within the time limitation as set forth in
Section 2.302 of the Charter, becomes effective without her
signature in accordance with the provisions of said Section
2.302 of the Charter.


Clerk of the Board

File No. 97-85-44

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